

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERNEST BROOKS, III.,

Defendant.

ORDER

02-cr-27-bbc

In an order entered on November 27, 2012, I denied defendant Ernest Brooks's motion under 18 U.S.C. § 3582. On December 13, 2012, defendant filed a motion for reconsideration which was denied on January 10, 2013. Defendant has filed a notice of appeal, without submitting the \$455 fee for filing his notice of appeal that is required if he is to take an appeal from the denial of a § 3582 motion. Therefore, I construe defendant's notice as including a request for leave to proceed in forma pauperis on appeal under 28 U.S.C. § 1915.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not

taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Defendant had court-appointed counsel during the criminal proceedings. Therefore, he can proceed in forma pauperis on appeal unless I find that his appeal is taken in bad faith. In this case a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith. As I explained in the December 13, 2012 and January 10, 2013 orders, defendant is not eligible for a sentence reduction under § 3582 because his base offense level remains as it was at the time of his sentencing. Because he is not eligible for a reduction, I will deny his request to proceed in forma pauperis on appeal.

Under Fed. R. App. P. 24, defendant has 30 days from the date of this order in which to ask the court of appeals to review this court’s denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by (1) an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and (2) a copy of this order.

ORDER

IT IS ORDERED that defendant Ernest Brooks’s request for leave to proceed in forma pauperis on appeal is DENIED. I certify that defendant’s appeal is not taken in good

faith. Defendant has the right to appeal this order certifying his appeal as not taken in good faith.

Entered this 30th day of January, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge